IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

RSA.No. 828 of 2006()

AS.205/1996 of SUB COURT, TIRUR
OS.232/1994 of M.C.,PARAPPANANGADI

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: APPELLANTS/PLAINTIFFS

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1. PARAMESWARAN, S/O.KARAPPAN,
VADAKKE PURAKKAL, ULLANAM AMSOM DESOM,
PARAPPANANGADI, MALAPPURAM DISTRICT.

2. BABU, S/O.KARAPPAN, DO. DO.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENTS: DEFENDANTS

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1. SUBRAMANIAN, S/O.AYYAPPAN,
KALLUNGAL VADAKKE PURAKKAL, ULLANAM AMSOM
DESOM, TIRURANGADI TALUK, PARAPPANANGADI,
MALAPPURAM DISTRICT.

2. BHARGAVI, D/O.AYYAPPAN,
W/O.PARAKKAL VELAYUDHAN, PARATHINI PARAMB
HOUSE, ULLANAM AMSOM, PARAPPANANGADI,
MALAPPURAM DISTRICT.

3. SEETHAMMA, W/O.AYYAPPAN,
KALLUNGAL VADAKKEPURAKKAL, ULLANAM AMSOM DESOM,
TIRURANGADI TALUK, PARAPPANANGADI,
MALAPPURAM DISTRICT.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 27/09/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.2087/2006 IN R.S.A.No.828/2006

27.9.07 DISMISSED sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 828 OF 2006

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Dated this the 27th day of September, 2007

JUDGMENT

Plaintiffs in O.S.232/1994 on the file of Munsiff Court, Parappanangadi are the appellants. First respondent is second defendant and other respondents are legal heirs of deceased first defendant. Appellants instituted the suit seeking a decree for permanent prohibitory injunction contending that plaint C schedule property originally belonged to vadakkepurakkal Karuppan the father of appellants on jenm right and under Ext.A1 gift deed he gifted plaint schedule property to appellants and since they have been in possession of plaint C schedule property and a portion of the plaint C schedule property, shown as plaint B schedule property, was assigned to one Kavungal Muhammed Haji and thereafter the remaining property has been in the possession of appellants and the property lying to the north of plaint A

schedule property belong to first respondent and to separate the plaint A schedule property and the property belonging to first respondent there is a clear boundary on the north and respondents requested appellants to sell plaint A schedule property to them and appellants were not prepared and respondents attempted to trespass into the plaint A schedule property and they have no right to do so and they are to be restrained by a permanent prohibitory injunction from trespassing into the plaint A schedule property.

2. Respondents in the written statement contended that appellants have no right or title to plaint A schedule property. It was contended that plaint A schedule property is R.S.No.81/2 and it is having an extent of 80 cents and has been in the possession of first respondent and as per the order of the Land Tribunal, Parappanangadiin S.M.243/1988, purchase certificate was granted in their favour and appellants are not entitled to the decree sought for. Later when appellants amended

the plaint showing the survey number as R.S.81/2, respondents filed an additional written statement contending that appellants or their predecessors have no title to R.S.No.81/2.

3. Learned Munsiff on the evidence of P.W.1, D.Ws.1 and 2 and Exts.A1 to A10, B1 to B9 and C1 to C5 found that the disputed property does not form part of the property claimed by appellants and therefore appellants have no right, title or possession. The suit was dismissed. Appellants challenged the decree and judgment before Sub Court, Tirur in A.S.205/1996. On the death of first defendant, his legal heirs were impleaded respondents 2 to 4. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

4. Learned counsel appearing for appellants was heard.

5. The argument of learned counsel is that courts below did not appreciate the evidence in the

proper perspective and in a suit for injunction question of title should not have been decided and as the suit is only for injunction, question of title is to be left open to be decided in a separate suit especially when the reason for dismissal of the suit is non-identification of the plaint schedule property. Learned counsel argued that court fee was paid only under section 25(c) of Kerala Court Fees and Suit Valuation Act and in a suit for injunction the only question is to be decided is the question of possession and in such circumstance finding on the question of title is to be vacated and appellants are to be permitted to file a fresh suit.

6. On hearing the learned counsel, I do not find any substantial question of law is involved in the appeal.

7. True, appellants have to pay court fee, when the suit is only for injunction, under section 25(c) of Kerala Court Fees and Suit Valuation Act. But section 27(a) of Court Fees and Suit

Valuation Act mandates that when the suit is filed based on title or if an issue of title is framed in a suit for injunction, court fee is to be paid on the market value. The issues framed by the trial court includes that an issue of title. Moreover, when the plaint was amended, an additional issue was specifically framed on the question of title. Appellants did not file an application to delete that issue. Instead they proceeded with the trial and joined to decide issue of title. Hence it is futile at this stage to argue that question of title should not have been decided by the courts below. The right title and possession claimed by appellants is under Ext.A1. The right obtained by appellants under Ext.A1 is the right of their father who obtained it under Ext.A5. The dispute is with regard to the northern portion of the property. As rightly found by courts below, the northern boundary of Ext.A5, under which the donor obtained the property and Ext.A1 gift deed under which the donor gifted the

property in favour of appellants are different. The northern boundary under Ext.A5 is Asarivadakkekandiparambu which is different. Father of appellant have no right to transfer the property of the south of that boundary, as he did not obtain the right under Ext.A5 in that property. It is in such circumstance, courts below found that appellants did not have title or possesison of the property. Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006